



WEB COPY



W.P.Nos.13087 and 29339 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2023

PRONOUNCED ON : 13.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.Nos.13087 and 29339 of 2010

W.P.No.13087 of 2010

T.Sadagopan

: Petitioner

-VS-

1.Metropolitan Transport Corporation
(Chennai) Limited,
Rep. By its Managing Director,
Pallavan Salai, Chennai-600 002.

2.Metropolitan Transport Corporations
Provident Fund Trust,
Rep. by its Manager,
Pallavan Salai, Chennai-600 002.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to settle the terminal benefits including provident fund, other legal dues and pensionary benefits due to the petitioner with uptodate interest within a time frame.



W.P.Nos.13087 and 29339 of 2010

WEB COPY

For Petitioner : Mr.K.Ramesh
Senior Counsel
for Mr.K.G.Vipranarayanan

For Respondents : Mrs.Rita Chandrasekar
for Mr.Jayesh B.Dolia

W.P.No.29339 of 2010

T.Sadagopan

: Petitioner

-VS-

1.The Presiding Officer,
I Additional Labour Court,
High Court Compound,
Chennai-600 104.

2.The Management of Metropolitan Transport Corporation Limited,
Pallavan Salai, Chennai-600 002. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records and papers from the files of the first respondent in I.D.No.211 of 2003 and quash its impugned Award made therein dated 14.12.2007 insofar as the first respondent has restricted the claim of the petitioner to one of compensation of an amount of Rs.1,20,000/- in lieu of reinstatement in service, with back wages, with continuity of service and with all other attendant benefits.



W.P.Nos.13087 and 29339 of 2010

For Petitioner : Mr.K.Ramesh
Senior Counsel
for Mr.K.G.Vipranarayanan

For R1 : Court

For R2 : Mrs.Rita Chandrasekar
for Mr.Jayesh B.Dolia

COMMON ORDER

By consent of both parties, both the cases are taken up together and disposed of the common order.

2. W.P.No.29339 of 2010 is filed by the labour against the award passed in I.D.No.211 of 2003, whereby, a consolidated amount of Rs.1,20,000/- was granted as a compensation was challenged and sought for reinstatement with full backwages.

3. W.P.No.13087 of 2010 is filed by the petitioner for issuance of writ of Mandamus, directing the Transport Corporation to settle the terminal



W.P.Nos.13087 and 29339 of 2010

benefits including provident fund and other legal dues and pensionary benefits with uptodate interest within a time frame.

W.P.29339 of 2010 :

4. The service matrix of the petitioner that is required for determination of this petition are as under:

4.1. The petitioner joined the services of then Pallavan Transport Corporation Limited as Driver and subsequently, it was renamed as Metropolitan Transport Corporation (Chennai) Limited, on 07.04.1981. Thereafter, the petitioner was issued with a charge memo alleging that on 18.09.1999, while the petitioner was on duty in Route No.70, plying between Tambaram to Koyambedu caused fatal accident at about 05.50 a.m., by driving the bus in a rash and negligent manner. Thereafter, the respondent Corporation issued final order on 18.11.2000 removing the petitioner from service. Further, on 30.04.2005, the petitioner reached the age of superannuation ie., 58 years.

4.2. Against the order of termination passed on 18.11.2000, the



W.P.Nos.13087 and 29339 of 2010

petitioner challenged the same by raising an industrial dispute under Section 2-A(2) of the Industrial Disputes Act, as the conciliation talks failed and the same is taken up as I.D.No.211 of 2003.

5. Before the Labour Court, no oral evidence was let in on either side. Ex.W.1 to Ex.W.5 were marked on the side of the petitioner/workman and Ex.M.1 to Ex.M.15 were marked on the side of the second respondent Transport Corporation.

6. In the meanwhile, the petitioner has attained the age of superannuation (58 years) on 30.04.2005. Taking into consideration the entirety of the circumstances, the Labour Court has observed that even if the order of termination is set aside, the petitioner cannot be granted reinstatement relief and granted only a compensation of Rs.1,20,000/- in lieu of reinstatement and other benefits on the ground that the petitioner has earlier committed so many accidents and hence, the present writ petition.

7. The other writ petition is for settlement of terminal dues.



W.P.Nos.13087 and 29339 of 2010

WEB COPY

8. The Transport Corporation filed counter and during the arguments, the order passed by the controlling authority under the Payment of Gratuity Act and order of the appellate authority under the Payment of Gratuity Act are also placed for my perusal.

9. The learned Senior Advocate Mr.K.Ramesh, made submissions in W.P.No.29339 of 2010 and drew my attention to the finding of the Labour Court that the enquiry was conducted by the respondent management in a fair and proper manner, however, the finding of the enquiry officer is not in accordance with law and held that it is perverse and also held that since the enquiry finding is set aside, termination order has to be set aside. Therefore, in spite of ordering reinstatement, as the petitioner attained the age of superannuation, has granted compensation of Rs.1,20,000/- and would state that the Management has preferred a writ petition challenging the award. However, once the enquiry finding is set aside and termination order is set aside, awarding of lump sum compensation does not arise and entire backwages is to be granted.



W.P.Nos.13087 and 29339 of 2010

10. The learned Senior Counsel further drew my attention to Section 11-A of the Industrial Disputes Act and contended that if the Labour Court comes to the conclusion that if the charges are proved and if the punishment is not proportionate to the proved charges, at that time only, they could reduce the punishment and hence, he sought for backwages from date of termination till the date of retirement and continuity of service.

11. In WP No.13087 of 2010, the very same petitioner has sought for a direction to the Transport Corporation for grant of terminal benefits viz., pension, payment of gratuity and DCRG. Perusal of page No.6 of the typed set of papers shows that a sum of Rs.39,276/- is paid towards Gratuity and Page No.7 shows that a sum of Rs.1,21,516/- is paid towards Provident Fund.

12. Further, it appears that as against the non payment of gratuity, the petitioner has preferred PG No.203 of 2009 wherein the amount has been refixed as Rs.83,008/- and thereafter, on appeal in PGA No.9 of 2011, a further sum of Rs.14,460/- has been ordered. Thus, a total sum of



W.P.Nos.13087 and 29339 of 2010

Rs.97,468/- was awarded as Gratuity along with 10% interest from the date of due to the date of the order of the appellate authority, against which, he paid only Rs.39,276/- and the balance amount has to be paid along with interest.

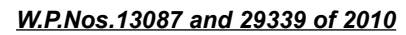
13. Mrs.Rita Chandrasekaran, learned Standing Counsel appearing for the respondents-Transport Corporation would contend that though the award is passed in the year 2007, he has preferred the writ petition only in the year 2010. Since on the date of the award, the petitioner has attained superannuation, a lump sum compensation of Rs.1,20,000/- is ordered and also paid and the same is sufficient. With regard to payment of Gratuity and Provident Fund amount, they will go according to law. In respect of pension, she would contend that the petitioner is entitled for pension if only he has put on 20 years of service. At this distance of time, since the petitioner has not worked for such period, on the principle of 'No Work No Pay', no contribution has been received and hence, pension could not be granted.



W.P.Nos.13087 and 29339 of 2010

14. From the service records as stated by the petitioner, I find that the petitioner joined in the service on 07.04.1981 and he was terminated on 18.11.2000 and almost he has completed 19 years of service and the pension is for 20 years of service is required.

15. The learned Senior Counsel appearing for the petitioner further drew my attention to the finding of the Labour Court that the departmental enquiry has been conducted in a fair and proper manner and with regard to the finding whether the enquiry officer is in accordance with the evidence available on record, the Labour Court has recorded a finding that the findings of the enquiry officer is not in accordance with the evidence available on record and further, held perverse on the ground that even in the criminal case instituted against the petitioner herein for the alleged offence under Section 304A of IPC, he has obtained an order of acquittal and with regard to the entitlement of the petitioner for reinstatement and other benefits. It appears that among Ex.M.12 and Ex.M.13, the petitioner has caused earlier many accidents and final order is passed under Ex.M.15 and the petitioner has met with major accidents and also during his service 38



16. As submitted by the learned Standing for Metropolitan Transport Corporation Limited, a sum of Rs.39,276/- was paid as a provident fund and gratuity was not paid, however, undertakes to pay at the earliest. Going through Ex.M.12 and Ex.M.13, I find that the Labour Court has not to have considered the service of the petitioner, who completed his service at 20 years from 1981 to 2000, however, running short of few months for completion of 20 years, so as he will get pensionable benefits. Accordingly, following the ratio laid down by the Hon'ble Division Bench of this Court in *P.Palanivel 'C' Coy Vs. The Commandant and others* [No.2041 of 2018, dated 16.03.2022], this Court hereby modifies the order to the extent as indicated above.



W.P.Nos.13087 and 29339 of 2010

17. The lump sum compensation awarded by the Labour Court for a sum of Rs.1,20,000/- is hereby set aside, instead of the same is modified into for reinstatement upto the qualifying period of few months, which he falls short for 20 years and he is entitled for pension. However, he is not entitled for continuity of any service or any salary or backwages and he is only entitled for pension alone.

18. With these observations, W.P.No.29339 of 2010 is partly allowed to the extent indicated above. No costs.

19. With regard to W.P.No.13087 of 2010, the prayer sought for in the writ petition is in the settlement of terminal benefits, pursuant to the modified order as stated above, the petitioner is entitled for gratuity and provident fund as per the law and as stated supra, he is entitled for pension and pension only and not for back wages. Since it is only few months short for pension and accordingly, the writ petition stands ordered to the extent indicated above. The balance of the statutory payment of gratuity and provident fund has to be settled within a period of 8 weeks from the date of



W.P.Nos.13087 and 29339 of 2010

receipt of a copy of this order. No costs.

WEB COPY

13.12.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
sji

To

The Presiding Officer,
I Additional Labour Court,
High Court Compound,
Chennai-600 104.

RMT. TEEKAA RAMAN, J.

sji



WEB COPY



W.P.Nos.13087 and 29339 of 2010

**Pre-Delivery Order made in
W.P.Nos.13087 and 29339 of 2010**

13.12.2023